

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

LARRY GAPEN,

Petitioner,

: Case No. 3:08-cv-280

- vs -

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

DAVID BOBBY, Warden,

Respondent.

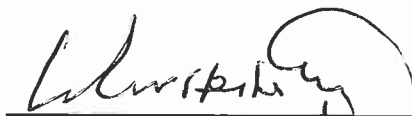
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**ORDER ADOPTING REPORT AND RECOMMENDATIONS ON
WARDEN'S MOTION TO DISMISS THE TWENTY-FOURTH AND
TWENTY-FIFTH CLAIMS FOR RELIEF**

The Court has reviewed the Report and Recommendations of United States Magistrate Judge Michael R. Merz (Doc. #165), to whom this case was referred pursuant to 28 U.S.C. § 636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) has expired, hereby ADOPTS said Report and Recommendations.

Accordingly, the Warden's Motion to Dismiss on the basis that Grounds Twenty-Four and Twenty-Five are not cognizable in habeas corpus is DENIED on the authority of *Adams v. Bradshaw, supra*. The Warden's procedural default defense to Ground 25 is DENIED without prejudice as premature.

September 13, 2012.



Walter Herbert Rice
United States District Judge